SANJIV

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 979 OF 2002

M/s. Lemuir Express ... Petitioner

Vs.

The Assistant Commissioner of Customs & Anr. ...Respondents

Mr. Madhu M. Patel for the Petitioner.

Mr. J. C. Satpute with A. D. Kango for respondent 1.

Ms. M. H. Mhatre, APP for the State.

CORAM : SMT. RANJANA DESAI, J.

DATED : 21ST DECEMBER, 2006.

P.C. :-

1. The petitioner is original accued 4. He has challenged in this petition order dated 14/10/1999 passed by the Chief Metropolitan Magistrate, Esplanade Court, Mumbai rejecting the application filed by the petitioner for discharge and order dated 08/10/2001 passed by the Additional Sessions Judge, Mumbai rejecting the petitioner's

revision application. The petitioner along with others is charged for offences under Section 135 (1)(b) read with Section 135(1)(i) and Section 132 of the Customs Act.

2. The case of the prosecution is that accused 1 and 2 imported rough diamonds declaring inflated value with intention to remit excess foreign exchange for monetary gain. The petitioner is a courier company and accused 3 is its manager. Accused 3 is alleged to have taken active part in forging the invoice value of the imported goods. According to the prosecution he has abetted the offences committed by accused 1 and 2.

3. Mr. Mehta, learned counsel appearing for the petitioner contended that there is absolutely no evidence against the petitioner. He submitted that the petitioner is a courier company. It had no knowledge of over valuation of the goods. There is nothing to establish that the petitioner had any knowledge of the alleged forgery or the benefit which accused 1 and 2 were to derive on account of the alleged forgery of invoices. The learned counsel contended that at the most the petitioner can be said to have committed a mistake. The petitioner therefore should have been discharged. Mr. Mehta

also contended that adjudicating authority has exonerated the petitioner and this establishes that there is no evidence against the petitioner.

4. It is not possible to accept Mr. Mehta's submissions. Accused 3 was working for the petitioner. The learned Magistrate has rightly observed that at this stage case of the petitioner cannot be separated from the case of accused 3. The alleged misdeeds of accused 3 and 4 cannot be explained away as mistakes at this stage. So far as adjudication proceedings are concerned merely because the petitioner is exonerated in adjudication proceedings, criminal case filed against the petitioner cannot be quashed. The petitioner cannot be discharged on this ground. This position is well settled by the judgment of the Supreme Court in ***Standrad Chartered Bank & Ors. v. Directorate of Enforcement & Ors. (2006) 4 SCC 278***. The Supreme Court has said that adjudication proceedings and criminal prosecution are two independent proceedings. They are independent of each other and the finding on the adjudication is not conclusive on a prosecution under the Customs Act. Therefore, the petitioner cannot be discharged because the petitioner is exonerated in

adjudication proceedings.

5. In view of the above, there is no substance in the petition. The petition is dismissed.

(SMT. RANJANA DESAI, J.)